

MAR 17 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

LARRIANTE SUMBRY,

Petitioner - Appellant,

v.

CECIL DAVIS,

Respondent - Appellee.

No. 05-15125

D.C. No. CV-04-01561-PMP

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Submitted March 8, 2006**

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Indiana state prisoner Larriante Sumbry appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition for improper venue. We review for abuse of discretion, *see Miller v. Hambrick*, 905 F.2d 259,

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

262 (9th Cir. 1990), and we affirm.

The district court granted a Certificate of Appealability (“COA”) on the issue of whether transfer of this action to the United States District Court for the Northern District of Indiana would be in the interest of justice. Because the record reflects that appellant will not be prejudiced by the district court’s decision not to transfer this case, we conclude that the district court did not abuse its discretion. *See Cruz-Aguilera v. INS*, 245 F.3d 1070, 1074 (9th Cir. 2001) (order) (explaining that prejudice to an appellant is one of the factors a court should consider when deciding whether to transfer a case in the interest of justice).

To the extent that appellant raises uncertified issues, we construe such argument as a motion to expand the COA, and we deny the motion. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

All outstanding motions are denied.

AFFIRMED.